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97TH CONGRESS, 1st Session } SENATE { EXECUTIVE REPT. No. 97-23

ADDITIONAL PROTOCOL I TO THE TREATY FOR THE PROHIBITION OF NUCLEAR WEAPONS IN LATIN AMERICA (THE TREATY OF TLATELOLCO)

ORIGINAL

OCTOBER 19 (legislative day, OCTOBER 14), 1981.—Ordered to be printed

COMPLETED

Mr. PERCY, from the Committee on Foreign Relations, submitted the following

REPORT

[To accompany EX. I, 96-2]

The Committee on Foreign Relations, to which was referred the Additional Protocol I to the Treaty for the Prohibition of Nuclear Weapons in Latin America, also known as the Treaty of Tlatelolco, signed on behalf of the United States of America on May 26, 1977, having considered the same, reports favorably thereon with understandings and recommends that the Senate give its advice and consent to ratification thereof.

PURPOSE

The purpose of this protocol is to extend the nuclear-free obligation to cover all territories within the zone of the Treaty of Tlatelolco, namely all territories that are the possessions of non-Latin American nations. Protocol I would obligate the United States not to test, use, store, or deploy nuclear weapons in the principal territories, of Puerto Rico, the Virgin Islands, and the Guantanamo Naval Base.

BACKGROUND

The Treaty for the Prohibition of Nuclear Weapons in Latin America, also known as the Treaty of Tlatelolco, which was opened for signature in February 1967, established the first nuclear free zone in any populated region in the world. The Latin American parties to the treaty are obligated to prohibit in their respective territories the manufacture, testing, use, storage, deployment, or possession of nuclear weapons, whether by the parties themselves or by anyone else. In addition, parties to the Treaty are prohibited from engaging in nuclear weapons activities anywhere in the world.

Under the treaty, each party must conclude a safeguards agreement with the International Atomic Energy Agency (IAEA) covering

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all nuclear facilities. In addition to IAEA inspection, parties are obligated to permit, when requested by another party, "special inspections" by a regional authority.

Although non-Latin American nations are not eligible to join the treaty itself, a number of nations are eligible to adhere to additional Protocols I and II, which were agreed upon together with the treaty. Protocol II, which applies to nuclear-weapon states, obligates those states to respect the nuclear free zone, not to contribute to any treaty violations, and not to use or threaten to use nuclear weapons against parties to the treaty. Protocol II was ratified by the United States on May 12, 1971, pursuant to Senate advice and consent to ratification. France, the People's Republic of China, and the United Kingdom also have ratified Protocol II. The Soviet Union signed Protocol II in May, 1978, and ratified it in December, 1978.

Protocol I, which is now under consideration, was transmitted by the President on May 24, 1978. The President has asked that the Senate give its advice and consent to ratification with understandings and declarations concerning transit and transportation privileges, exercise of the freedom of the seas, and passage through territorial waters. Porotocol I is designed to extend the nuclear-free obligation to cover all territories within the treaty zone. If ratified, Protocol I would obligate the United States not to test, use, store, or deploy nuclear weapons in the principal territories of Puerto Rico, the Virgin Islands, and the Guantanamo Naval Base.

Of the other states eligible to adhere to Protocol I, the Netherlands and Great Britain have ratified the Protocol, and France has signed, but not ratified, Protocol I.

The treaty can only enter into force for all states that have ratified it if the following conditions are met: (1) Ratification by all Latin American states in existence in 1967; (2) adherence to additional Protocols I and II by all states eligible to adhere; and (3) conclusion of safeguards agreements with the IAEA. However, states that have ratified the treaty are given the option to waive these requirements and thereby become bound before the requirements are met.

At present, 22 Latin American states have waived the requirements of the Treaty of Tlatelolco: Bahamas, Barbados, Bolivia, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Surinam, Trinidad/Tobago, Uruguay, and Venezeula. Chile and Brazil have not waived the requirements and will only become bound upon full entry into force.

MAJOR PROVISIONS

The principal obligation of states who become signatories to the Protocol is set forth in Article 1, that is "to apply the statute of denuclearization in respect of warlike purposes as defined in articles 1, 3, 5 and 13 of the Treaty for the Prohibition of Nuclear Weapons in Latin America in territories for which, de jure or de facto, they are internationally responsible and which lie within the limits of the geographical zone established in that Treaty." Those articles prohibit the

testing, use, manufacture, production, acquisition, receipt, storage, installation, deployment and possession of any nuclear weapons, and require that signatories enter into an agreement with the International Atomic Energy Agency to place their nuclear facilities under IAEA safeguards.

COMMITTEE ACTION

The Committee first heard testimony on the Protocol on August 15, 1978, but took no action due to a procedural dispute with the administration. The Committee again heard testimony from the administration on September 22, 1981. Eugene Rostow, Director of the Arms Control and Disarmament Agency; Devis R. Robinson, Legal Advisor, Department of State; Sheila Ruckley, Director for Multilateral Negotiations, Office of the Secretary of Defense; and Rear Admiral Robert C. Austin, United States Navy, Deputy Director for International Negotiations, Joint Chiefs of Staff. All witnesses expressed their full support for the Protocol.

The Committee voted 15–0 on September 29, 1981, to report the Treaty favorably to the Senate. Voting in the affirmative were Senators Percy, Baker, Helms, Hayakawa, Lugar, Mathias, Kassebaum, Pressler, Pell, Glenn, Sarbanes, Zorinsky, Tsongas, Cranston, and Dodd.

MAJOR ISSUES CONSIDERED BY THE COMMITTEE

(1) *Rights of Transit and Transport.*—The United States and the Soviet Union have taken different positions on rights of transit and transport of nuclear weapons. In an unofficial translation of the Soviet statement upon signing Protocol II on May 20, 1978, the Soviet stated.

> The final act of the preparatory commission for the declaration of Latin America as a nuclear free zone interprets the treaty in the sense that granting permission for transit of nuclear weapons at the request of states not adhering to the treaty is within the competence of each contracting party. With respect to this, the Soviet Union affirms its position that permission for transit of nuclear weapons in any form would contradict the goals of the treaty, according to which, as is specifically stated in the preamble, Latin America should be completely free of nulcear weapons, and would be incompatible with the non-nuclear status of the contracting parties and with obligations defined in Article I of the Treaty.

This issue was discussed at length by the Committee at the 1978 hearing. In response to a request from the Committee, the Department of State provided a legal analysis of the U.S. position that the transit or use for transport of United States vessels and aircraft carrying nuclear weapons through the zone of application (including port visits and aircraft landings) will not be affected by the provisions in the treaty relating to the possession of nuclear weapons. The State Department witnesses during the September 22, 1981 hearing confirmed that the present Administration fully supported the 1978 legal analysis.

The State Department concluded:

> The Treaty of Tlatelolco does not prohibit the contracting Parties from granting transit and transport privileges to States not Parties to the Treaty. It is clear from the negotiating history that the grant or denial of such privileges remains solely within the competence of each of the Contracting Parties. This view is strongly reinforced by the consistent State practice under the Treaty and by the statements of interpretation that have been given by Parties to the Treaty and its Protocols.
>
> The Soviet statement of May 19, 1978 has no legal significance. If that statement were repeated in connection with Soviet ratification of Protocol II, it would not constitute a reservation. Nevertheless, it would be desirable for the United States to minimize the implications of the Soviet statement by reiterating its own views when the Soviets ratify Protocol II and also when the United States ratifies Protocol I. United States ratification of Protocol I would enable the United States to participate directly in the implementation of Article 1 of the Treaty.

The Soviet Union did not repeat their earlier statement when, they ratified Protocol II, although they made reference to that statement. Subsequently, the U.S. notified the parties of its contrary position.

To clarify the issue, the Department of State recommended in 1978 that certain declarations and understandings be adopted by the Senate in its resolution of ratification. The Reagan Administration agrees with the earlier declarations and understandings with a minor change of five words. The recommended declarations and understandings with the additional Reagan Administration language italicized, are as follows:

> That the understandings and declarations attached by the United States to its ratification of Additional Protocol II apply also to its ratification of Protocol I;
>
> That the provisions of the Treaty made applicable by this Additional Protocol do not affect the exclusive power and legal competence under international law of a State adhering to this Protocol to grant or deny transit and transport privileges to its own or any other vessels or aircraft *irrespective of cargo or armaments.*
>
> That the provisions of the Treaty made applicable by this additional Protocol do not affect rights under international law of a State adhering to this Protocol regarding the exercise of the freedoms of the seas, or regarding passage through or over waters subject to the sovereignty of a State.

The understandings and declarations attached to Protocol II which would be repeated in ratifying Protocol I made the following points:

> (1) United States ratification cannot be construed as an acceptance by the United States of the unilaterally asserted territorial boundary claims of the parties to the treaty (e.g., territorial seas).
>
> (2) United States military transit and transport privileges will not be affected by ratification.

(3) The pledge not to use nuclear weapons against a contracting party would not prohibit a United States nuclear response in the event of an armed attack by a party with the assistance of a nuclear weapon state.

(4) Contracting parties are prohibited from acquiring nuclear explosives for peaceful purposes, but the United States could carry out nuclear explosions for peaceful purposes on their behalf and reaffirms its willingness to do so on the same terms as under the Nuclear Non-Proliferation Treaty.

(5) The United States will act with respect to Latin American territories of Protocol I adherents just as Protocol II would require us to act with regard to contracting parties.

2. *Joint Chiefs Support.*—Following the Committee hearing in 1978, it was disclosed in an Evans and Novak column that Mr. Zbigniew Brzezinski, President Carter's National Security Advisor, had written to Secretary of Defense Brown instructing the Joint Chiefs of Staff to give "complete and unequivocal support to Protocol I to the Treaty of Tlatelolco". In response to an inquiry, General David Jones, Chairman of the Joint Chiefs of Staff, wrote the Chairman, Senator Sparkman, that the Joint Chiefs had decided months prior to the Brzezinski memo to support the Protocol. The National Security Council staff subsequently refused Committee requests by Senators Sparkman and Church for the memo. Given the change in administrations, provision of the memo appears to be moot at this point, and the Committee did not request it.

During his testimony on September 22, 1981, Admiral Austin, speaking for the Joint Chiefs of Staff, unequivocally stated that the Joint Chiefs had arrived at their decision to support Protocol I independently:

> The Joint Chiefs of Staff support additional Protocol I of the Treaty of Tlatelolco as limiting the spread of nuclear weapons to areas hitherto free of them. It is their understanding that additional Protocol I and the accompanying supplemental statements will not affect the rights of the United States under International Law regarding the exercise of freedom of the seas or regarding the exercise of the freedom of the seas or regarding passage through or over water subject to the sovereignty of the state.

Mr. Rostow also stated on behalf of the Administration that the independence of the Joint Chiefs of Staff in arriving at a common position and communicating it to the Congress should not be in doubt.

SECTION-BY-SECTION ANALYSIS

The Preamble states that the signatories are convinced that the Treaty of Tlatelolco represents an important step towards ensuring the non-proliferation of nuclear weapons, which is not an end in itself but a means of achieving general and complete disarmament. The signatories express their desire to contribute to the end of the armaments race, especially in nuclear weapons, and thereby agree to the articles of the Protocol.

Article 1 is the heart of the Protocol. It provides that all signatories who have either de jure or de facto international responsibility for

territory in Latin America undertake to comply with articles 1, 3, 5 and 13 of the Treaty, which exclude nuclear weapons from those territories.

Article 2 provides that the duration and terms of ratification and denunciation shall be the same as in the Treaty.

Article 3 provides that the Protocol shall enter into force for the States which have ratified it on the date of the deposit of their respective instruments of ratification.

Entry into force

Protocol I will enter into force with the Treaty of Tlatelolco. The Treaty will come into force when the following conditions are met: (1) Ratification by all Latin American states in existence in 1967; (2) adherence to additional Protocols I and II by all states eligible to adhere; and (3) conclusions of safeguards agreements with IAEA. However, states that have ratified the Treaty are given the option to waive these requirements and thereby become bound before the requirements are met.

At present, 22 Latin American states have waived the requirements of the Treaty of Tlatelolco: Bahamas, Barbados, Bolivia, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Grenada, Guatemala, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Surinam, Trinidad/Tobago, Uruguay, and Venezuela. Chile and Brazil have not waived the requirements and will only become bound upon full entry into force.

There are several remaining conditions for full entry into force of the Treaty:

United States ratification of Protocol I;
French ratification of Protocol I;
Argentine ratification of the Treaty itself;
Cuban signature and ratification of the Treaty.

NOTE.—Ratification by Guyana, whose territory is the subject of duspute, is not required.

RESOLUTION OF RATIFICATION

Resolved (*two-thirds of the Senators present concurring, therein*), That the Senate advise and consent to the ratification of Additional Protocol I to the Treaty for the Prohibition of Nuclear Weapons in Latin America, also known as the Treaty of Tlatelolco, signed on behalf of the United States of America on May 26, 1977 subject to the following understandings:

(1) That the provisions of the Treaty made applicable by this Additional Protocol do not affect the exclusive power and legal competence under international law of a State adhering to this Protocol to grant or deny transit and transport privileges to its own or any other vessels or aircraft irrespective of cargo or armaments.

(2) That the provisions of the Treaty made applicable by this Additional Protocol do not affect rights under international law of a State adhering to this Protocol regarding the exercise of the freedom of the seas, or regarding passage through or over waters subject to the sovereignty of a State.

(3) That the understandings and declarations attached by the United States to its ratification of Additional Protocol II apply also to its ratification of Additional Protocol I as follows:

I. That the United States Government understands the reference in Article 3 of the treaty to "its own legislation" to relate only to such legislation as is compatible with the rules of international law and as involves an exercise of sovereignty consistent with those rules, and accordingly that ratification of Additional Protocol II by the United States Government could not be regarded as implying recognition, for the purpose of this treaty and its protocols, or for any other purpose, of any legislation which did not, in the view of the United States, comply with the relevant rules of international law.

That the United States Government takes note of the Preparatory Commission's interpretation of the treaty, as set forth in the Final Act, that, governed by the principles and rules of international law, each of the contracting parties retains exclusive power and legal competence, unaffected by the terms of the treaty, to grant or deny non-contracting parties transit and transport privileges.

That as regards the undertaking in Article 3 of Protocol II not to use or threaten to use nuclear weapons against the Contracting Parties, the United States Government would have to consider that an armed attack by a Contracting Party, in which it was assisted by a nuclear-weapon state, would be incompatible with the Contracting Party's corresponding obligations under Article 1 of the treaty.

II. That the United States Government considers that the technology of making nuclear explosive devices for peaceful purposes is indistinguishable from the technology of making nuclear weapons, and that nuclear weapons and nuclear explosive devices for peaceful purposes are both capable of releasing nuclear energy in an uncontrolled manner and have the common group of characteristics of large amounts of energy generated instantaneously from a compact source. Therefore the United States Government understands the definition contained in Article 5 of the treaty as necessarily encompassing all nuclear explosive devices. It is also understood that Articles 1 and 5 restrict accordingly the activities of the contracting parties under paragraph 1 of Article 18.

That the United States Government understands that paragraph 4 of Article 18 of the treaty permits, and that United States adherence to Protocol II will not prevent, collaboration by the United States with contracting parties for the purpose of carrying out explosions of nuclear devices for peaceful purposes in a manner consistent with a policy of not contributing to the proliferation of nuclear weapons capabilities. In this connection, the United States Government notes Article V of the Treaty on the Non-Proliferation of Nuclear Weapons, under which it joined in an undertaking to take appropriate measures to ensure that potential benefits of peaceful applications of nuclear explosions would be made

available to non-nuclear-weapons states party to that treaty, and reaffirms its willingness to extend such undertaking, on the same basis, to states precluded by the present treaty from manufacturing or acquiring any nuclear explosive device.

III. That the United States Government also declares that, although not required by Protocol II, it will act with respect to such territories of Protocol I adherents as are within the geographical area defined in paragraph 2 of Article 4 of the treaty in the same manner as Protocol II requires it to act with respect to the territories of contracting parties.

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